IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1900 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT HOUSING BOARD

Versus

NOORMOHMMAD HAJIISMAILBHAI KAPASIAWALA

Appearance:

MRS KETTY A MEHTA for Petitioner

MR HD VASAVADA for Respondent No. 1 to

RULE SERVED for Respondent No. 21

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/04/2000

CAV JUDGEMENT

This is a revision application under Section 115 of the Code of Civil Procedure, 1908 challenging the order of the learned Civil Judge (JD), Bhavnagar below

application Exh.57 under which the learned Judge directed the applicant to submit the reply to the interrogatories before the date mentioned in the order. The respondents have filed the aforesaid Civil Suit No.441/86 against the applicant-Gujarat Housing Board. The Housing Board has constructed certain residential premises and they have been allotted to the opponents. The opponents have contended in the suit that the applicant has not acted reasonably and there were changes in the contract and contractors and the result is that the present opponents are now required to pay more than what was expected to be paid by them. Therefore, the main issue in the suit is with respect to the pricing of the accommodation allotted to the opponents who are the plaintiffs before the trial court. The interrogatories related to the names of the contractor, the amount paid to each contractor; the fact as to whether the contract was in writing and if so what was the date when the construction commenced and when it ended, how many tenders were issued, for what amount, under whose signature, how many tenders were filled up, what was the highest amount, what was the lowest amount of the tenders, whether development charges have been paid, when did the applicant obtain completion certificate from the Municipal Corporation etc. were the interrogatories. The Court has considered that the above interrogatories are relevant for the purpose of just decision in the matter and therefore, the interrogatories have been allowed. Feeling aggrieved by that order, the applicants have preferred this application before this Court.

2. Mrs. K A Mehta, learned Advocate for the applicant has vehemently contended on behalf of the applicant that the opponents cannot call upon the applicant to disclose the evidence. For this purpose, she has relied upon the decision in the case of Janaki Ballav Patnaik v. Bennentt Cokeman & Co. Ltd., reported in AIR 1989 Orissa 216 wherein it has been observed that evidence of the other side cannot be sought for through interrogatories. There is no dispute about this principle and the intention for providing for interrogatories under Order 11 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'the Code') is not on that line. It has been observed in paras 5 and 6 in the above referred decision that interrogatories are also relevant for the purpose of adjudication of issues if they relate to offending articles published in the Illustrated Weekly of India by the defendants. The facts are different but the impugned dispute is with respect to the reasonability of price fixed for the accommodation allotted to the present opponents. It therefore, cannot

be said that the above interrogatories are not relevant to the said issues.

3. As said above, the opponents have taken up a plea that the contractors have changed and, therefore, there is consequent rise in price and therefore, the opponents cannot be required to pay higher price for the accommodation allotted to them. Therefore, in that view of the matter, it would be relevant to consider if there was change in the hands of contractors and what amount has been paid to those contractors. It has been contended on behalf of the applicant that the applicant has truck-loads of documents which cannot be produced in the Court. It is to be noted that the prayer is not for production of documents. The prayer is for reply to the interrogatories. The amount of tender paid to the contractors, development charges etc. are all relevant for the purpose of fixation of the price in respect of the accommodation allotted to the opponents. Same way the amount paid to the Architect for the preparation of plans would also be relevant because that would be required to be added to the actual cost of the said accommodation.

4. In the case of Managing Director, Hindustan Aeronautics Ltd. v. Ajit Prasad, reported in AIR 1973 SC 76, it has been laid down that when the lower Appellate Court has passed order within its jurisdiction, this High Court should not interfere even if the order is right or wrong, in accordance with law or not, unless the jurisdiction has been exercised illegally or with material irregularity. This is an old principle on the point of jurisdiction of this court.

5. In AIR 1960 Cal. 536, in the case of Jamaitral Bishansarup v. Rai Bahadur Motilal Chamaria, there is a discussion about the provision with respect to interrogatories. There it was observed that administering of interrogatories is to be encouraged because they not infrequently bring an action to an end at an earlier stage to the advantage of all parties concerned. It further says that interrogatories may not extend to the evidence with which the opposite party intends to support his case at the trial, or to the contents of the opponent's brief or to the names of his witnesses or to the facts which merely support the case of the party interrogated. Here the interrogatories are not required for the purpose of knowing evidence of the other side. Therefore, the applicant is not required to produce any material evidence in support of the answers to be given on oath. In the case of Meenakshi sundaram

v. Radhakrishna, reported in AIR 1960 Madras 184, it has been observed that the respondent is not required to answer the interrogatories which are likely to lead into an incrimination of himself in any criminal offence. Here, there is no question of involvement of the applicant in any criminal proceedings if the answers are given. No question enlisted in the interrogatories is shown to be such that the answer would lead to criminal prosecution of some of the officers of the applicant Housing Board. On the other hand, so far as the revisional power is concerned, it has been laid down in Ramdeo Jha v. Chandar Thakur, reported in AIR 1982 Patna 172 that Section 115 of the Code not only requires the petitioners to show that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested in it or has acted in the exercise of its jurisdiction illegally or with material irregularity, but further to satisfy the Court that if the impugned order is allowed to stand, it would occasion a failure of justice or that an irreparable injury would be caused to the petitioners. In absence of such failure of justice or irreparable loss the Revisional Court would not interfere.

6. In the case of Delhi Development Authority v Pushpendra Kumar Jain, reported in JT 1994 (6) SC 292, the matter related to the pricing of accommodation. There, unfairness was alleged and it was observed that there was unfairness in the procedure. The facts before us, in light of the above observation in the above matter, can be discussed and decided at length after full trial.

7. In the case of Indore Development Authority v. Smt. Sadhana Agarwal, reported in JT 1995 (3) SC 1, the matter was little different. There was delay in executing Housing Scheme by Development Authority and consequential escalation was found in costs. The flats were taken over in possession by allottees in 1984 without payment of escalation. The appeals were allowed and the allottees were directed to pay balance cost with interest at the rate of 6% per annum. Again this will be a matter to be decided while considering whether the prices fixed are reasonable. This will again be a matter of evidence which can be gone into after full trial.

8. Learned Advocate for the present applicant has also contended at length that the pricing is a matter of dispute and the present applicant being defendant in the original suit, is going to lead evidence with respect to the pricing and reasonableness thereof. Again as said

above, the enquiry at this stage is not with a view to know the evidence of the present applicant. The enquiry is with respect to facts which have been covered by interrogatories. Learned trial Judge has jurisdiction to entertain the application and pass appropriate order for directing the applicant to answer the interrogatories. The learned Judge has exercised jurisdiction vested in him and it cannot be said that there is material irregularity committed by him in exercise of powers vested in him. In that view of the matter also there is no merit in this revision and consequently this Revision deserves to be dismissed. It has also been contended that the contract itself has not been challenged but the pricing is challenged. This can be gone into when the evidence is recorded as adduced by both the parties. It is contended that the application has been filed eight years after institution of the suit. However, when the trial court has not found any fault with the present opponent in filing this application late, it would not be proper for this Court to interfere with the order of the trial court on the ground of delay. The applicant will be in a position to give reply without producing documents on record. Therefore, there is no hardship on the part of the applicant. In that view of the matter, this matter is without any merit and is ordered to be dismissed. Rule discharged. No order as to costs.

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msp.